

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

CRUZ ANGEL SAENZ, On Behalf of Himself]	
and All Others Similarly Situated,]	
]	
Plaintiff,]	CAUSE NO.: 7:12-cv-00144
]	
v.]	JURY TRIAL DEMANDED
]	
OLD SHINE METALS, LLC,]	
ALTON SCRAP METALS, LLC and]	
HONORIO R. VILLARREAL,]	
]	
Defendants.]	
]	

RESPONSE TO DEFENDANTS' MOTION FOR REFERRAL TO MEDIATION

Defendants move the Court to require mediation. Doc. 21. Cruz Angel Saenz (Saenz), while not necessarily opposed to mediation by agreement at the proper time, opposes mandatory mediation. First, Saenz takes the position that any money that would be spent by the parties on mediation fees would be better spent towards settling the case. Second, Saenz believes that discovery issues remain to be ironed-out before mediation is appropriate. For example, this case was filed as a collective action and Defendants judicially admitted in their pleadings that they shared employees (including Saenz) who performed the same or similar duties as did Saenz. *See* Doc. 9, ¶¶ 10-13, 21, 22, 28 & 29. Just recently, however, in response to Saenz's discovery requests seeking the identity of these individuals, Old Shine Metals, LLC (Old Shine) categorically denied the existence of these employees. *See* Exhibit 1, Answers to Interrogatories 6 & 7.¹ Saenz, therefore, submits that he should not be required to mediate at this time.

¹ Old Shine's discovery responses were due by agreement of the parties on or about October 22, 2012. Old Shine, however, did not serve responses until January 11, 2013. *See* Exhibit 1.

Respectfully submitted,

/S/ Michael K. Burke

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon and forwarded to the following counsel of record in compliance with the Federal Rules of Civil Procedure via the Southern District's CM/ECF system on this the 29th day of January, 2013:

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